United States Court of Appeals

for the Second Circuit

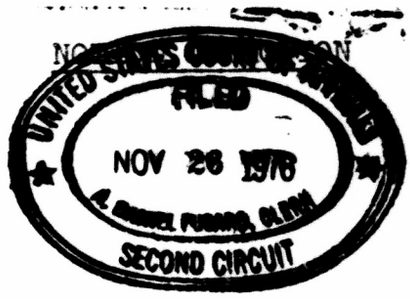
REPLY BRIEF

Reply Brief

16-1753

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7453



KAHLMAN LINKER and DYNAMISMM,

Plaintiff-Appellant,

v.

B

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, J. HENRY SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named,

Defendants-Appellees.

Sirs:

PLEASE TAKE NOTICE, that the undersigned will move on November 26, 1976, at the U.S. Courthouse, Foley Square, New York, N.Y., before a Judge of the Court of Appeals for the Second Circuit, for an order requiring counsel for defendant-appellees immediately to desist from practices conducted for the purposes of making plaintiff-appellant's papers in the cause of action herein so technically defective they cannot be cured in this Court, as well as order such other and further relief to plaintiff-appellant pro se, as is specified in the attached affidavit.

Dated: New York, N.Y.
November 26, 1976

Yours, etc.,

KAHLMAN LINKER
Plaintiff-Appellant pro se
67 Broad Street
New York, N.Y. 10004
(212) 425-3620

To: All Defendants

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -x

KAHLMAN LINKER and DYNAMISMM,

Plaintiffs-Appellants,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN, SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, J. HENRY SMITH, former Chairman and Director, and all other directors of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named,

Defendants-Appellees.

- -x

Docket No. 76-7453

MOTION AND
AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

KAHLMAN LINKER, being duly sworn, deposes and says:

1. He is plaintiff pro se in the captioned cause of action; and that

2. The captioned cause of action comes before this Court on appeal from an order of Judge Henry Werker, United States District Court for the Southern District of New York, dismissing the complaint with prejudice.

3. Plaintiff-appellant moves the Court to order a pre-trial conference in this cause of action for the purpose of considering the matters set out in the Rules of Appellate Procedure on the grounds that such a conference will expedite the trial and disposition of this action by simplifying and settling the issues between the parties, by correcting misapprehensions as to issues and procedures by one or more of the parties, and by eliminating unfair practices whereby counsel for defendants-appellees have been maliciously and prejudicially taking advantage of plaintiff-appellant pro se, who, perforce, has relatively little knowledge of the rules of court procedure.

4. Plaintiff-appellant in his Brief (and Appendix) has designated with particularity Items A, B, C, D, E and F (on pages 1, 2 and 3 of appellant's brief) the subject matter of the orders from which he was appealing; and has designated with particularity the questions or issues which are on appeal in this Court.

The Briefs and even the Appendix of defendants seemingly ignored in important instances the particularity of the subject matter of the items on appeal. Instead, defendant counsel are apparently bent on having the cause of action before this Court tried on issues arbitrarily set by them and in form for their special advantage.

5. For example, with respect to the content of the preceding paragraph, Item "A" on page 1 of plaintiff-appellant's

Brief states with particularity that plaintiff appeals from:

> "A final order (Werker, H.F.) entered on September 15, 1976, dismissing with prejudice the complaint. ." (Emphasis supplied) whereas all of defendants' Briefs respond only with arguments affirming Judge Werker's correctness in having simply dismissed plaintiff's cause of action, and speak not at all to the "with prejudice" nature of such dismissal.

In a word, plaintiff-appellant may or may not argue the issue pertaining to whether or not Judge Werker had acted correctly in having (simply) dismissed the Complaint because plaintiff pro se may have had or may not have had beneficial interest in the matter of the merger which is the subject matter of the Complaint herein."

But plaintiff-appellant will fight to his last breath for his contention that Judge Werker's order of dismissal was completely erroneous, if not maliciously so in that, most vitally, the dismissal was WITH PREJUDICE and was on the grounds that plaintiff had NO BENEFICIAL INTEREST whatsoever in the matter of the merger.

6. Similarly, defendant-appellants' Briefs base their arguments in their Briefs on the grounds that appellant Linker "did not own the stock," was not a purchaser or a seller of stock," or was not "a shareholder. . . holder or owner of securities" at the time of the merger, whereas that appealed from in plaintiff-

appellant's Brief is stated with particularity, quoting the very words used by the Honorable Judge Henry F. Werker:

> "It appearing to the Court that plaintiff pro se has no beneficial interest in the matter of the merger, etc." (Emphasis supplied.)

The issue on appeal relates specifically to whether or not plaintiff-appellant, Linker, did have or did not have beneficial interest in the matter of the merger, etc., not whether or not he "owned the stock," was a "purchaser or seller," or "a shareholder, holder or owner" at the time; and whether or not the extent of such beneficial interest, if any, was justification for dismissal with prejudice -- and nothing else insofar as stated in Item A in appellant's Brief is concerned.

7. With respect to Items 5 and 6 supra, plaintiff-appellant believes that a pre-trial conference would serve to establish the subject presented with clarity and precision, as issues to which defendants have the opportunity and need to respond, in the event that plaintiff-appellant may have, somehow, placed himself at frightening disadvantage in not having met with defendants at an earlier date for the purpose of settling between the parties, with particularity, the subject matter of the issues on appeal.

Plaintiff-appellant does not know whether such prior settlement between the parties is needed by the rules of this Court. But plaintiff-appellant does not want to take the chances, with distressing consequences for his cause of action, of having

erred in not having called for such an earlier meeting with defendant counsel.

8. Plaintiff-appellant also has observed that defendants' Briefs attack the standing of DYNAMISMM to sue. Appellant pro se must state, for what it may be worth to defendants, that nowhere in appellant's Brief, except on the title page, is the name, "Dynamismm," mentioned. Judge Werker's Order of Dismissal with prejudice had reference only to Linker's beneficial interest (or lack of it) in the matter of the merger.

Clearly, defendants have almost completely ignored the issues A, B, C, D, E on page 1 etc. that appellant detailed so painstakingly and with such particularity in his Brief. Dynamismm's standing to sue has not been, nor will it be fought for by plaintiff-appellant in this cause of action on appeal in this Court. Certainly, nothing with respect to Dynamismm was stated directly or indirectly as an issue on appeal, and it will save the time and energies of the Court and the parties to take this into account before the hearing is held.

9. Since August 11, 1976, plaintiff-appellant, Linker, has persistently made efforts to serve the Complaint for the proceeding of the Court below on certain defendants, but without one iota of success. The U.S. Marshal was completely frustrated in serving named defendants WERNER L. FRANK and FRANCIS V. WALKER, high executive officers of INFORMATICS, INC., as of February 27,

1974, particularly inasmuch as plaintiff-appellant did not know their business addresses, and counsel for the company and the staff at the home office (in the Los Angeles area, would not provide their business addresses.

Even more frustrating has been the experience of plaintiff-appellant in attempting to serve "all other executive officers and directors of Informatics, Inc., as of February 27, 1974," being the executive officers and directors who held of record for the special stockholders' meeting of February 27, 1974, 108,705 shares of common stock of Informatics, Inc., which, according to the Proxy Report for that meeting, would be voted in favor of the merger. Plaintiff has been unable as yet to obtain their names, much less their addresses.

Upon information and belief, Irving Parker, Esq., counsel for defendant, WALTER F. BAUER, (now President and chief executive officer of Informatics, Inc.) has been conducting himself unfairly to take advantage of plaintiff-appellant's obvious lack of knowledge of the rules of legal procedure, to make certain that the preparation and service of the causes of action by plaintiff-appellant pro se are defective and inefficacious.

Resultingly, neither Werner L. Frank, Francis V. Walker, or other executive officers or directors of Informatics, Inc., as of February 27, 1974, specifically named or yet unnamed, have been served with the Brief and Appendix of the appeal proceeding before this Court, much less served with the Complaint for the proceeding in the court below.

Plaintiff-appellant believes it unquestioned that, when and as the above named and unnamed defendants have been served with the Brief and Appendices in the instant proceeding, they will have designated as their counsel the same counsel, Irving Parker, Esq., now representing defendant, Walter F. Bauer.

10. For at least two months, plaintiff-appellant, Linker, has been persistently attempting to obtain from Werner Weinstock, Esq., counsel for defendants, J. HENRY SMITH and EQUITABLE LIFE HOLDING CORPORATION, the names and addresses of the directors of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES as of February 27, 1974. Resultingly, such directors (except for J. Henry Smith) have not yet been served with the Brief and Appendix of the appeal proceeding before this Court, much less served with the Complaint proceeding in the Court below.

Upon information and belief, counsel for defendants, J. Henry Smith and Equitable Life Holding Corp., has been conducting himself unfairly to take advantage of plaintiff-appellants' obvious lack of knowledge of the rules of legal procedure to make certain that the preparation and service of the causes of action by plaintiff appellant pro se are defective and inefficacious.

Plaintiff-appellant believes it unquestioned that, when and as the above-named and unnamed defendant directors have been served with the Brief and Appendices in the proceeding on appeal before this Court, they will have designated as their counsel the same counsel, Werner Weinstock, Esq., now representing J. Henry

Smith and Equitable Life Holding Corp. Counsel, Mr. Weinstock, has told plaintiff-appellant that all directors of The Equitable have been made fully aware of the proceeding herein, and were members of a legal "forum" at The Equitable (which apparently fully informed them as to the nature of the complaint against them, what their liabilities were, and how they were protected with respect to such).

11. On November 16, 1976, plaintiff-appellant received in the mail a Notice of Motion and Affidavit in the cause of action herein, stating that on November 12, 1976, counsel, Thomas Hanrahan, Esq., for defendant, Merrill Lynch, had filed a motion before a Judge of the Second Circuit Court of Appeals for leave to file a separate appendix containing the complaint in action herein with the costs to be assessed against plaintiff-appellant, Linker, on the grounds that Linker had failed to do so as required by Rule 30(a)(2) of the Federal Rules of Appellate Procedure.

The notice of motion stated that Hanrahan would move on November 29, 1976, at the U.S. Courthouse for an order granting him permission to file the separate appendix.

On November 22, 1976, plaintiff-appellant filed an affidavit in opposition to motion of defendant-appellee to asses costs of separate appendix upon plaintiff-appellant. Copies of such affidavit were served on four defendant counsel on November 22, 1976, and on the last remaining, the fifth, in the early morning of November 23, 1976, by certified mail.

On Friday afternoon, November 19, Linker delivered a copy of plaintiff-appellant's affidavit in opposition to motion of defendant-appellees to asses costs of separate appendix upon plaintiff-appellant. When in Merrill Lynch's reception room, Linker was able to get to see Mr. Hanrahan and suggest that there be no verbal argument on the November 29 scheduled hearing date, stipulation which Mr. Hanrahan agreed, along with his agreement to advise Linker of the Court's decision thereof.

On Tuesday morning, November 23, 1976, plaintiff, Linker, received a copy of the order signed by the Hon. William H. Mulligan, Circuit Judge of the U.S. Court of Appeals for the Second Circuit, which stated that the motion by Merrill Lynch, dated November 12, 1976, "for leave to file today (November 19, 1976) an appendix be and it hereby is granted." (See Exhibit A, appended.)

Plaintiff, Linker, immediately on receipt of Judge Mulligan's order dated November 19, 1976, phoned Hanrahan and asked him, "How come?" to which he replied, "He didn't understand it either." When Linker demanded he do something about getting it reversed, Hanrahan said he "would not," that Linker "could try if he wanted to."

Linker promptly phoned (early in the morning of November 23) Judge Mulligan's office and asked to talk with his law clerk, but was told that the one acquainted with the proceeding was "out of the office." Linker left his phone number for a return call; but no return call was received during the whole day or any day later.

It is relevant to state that Linker's opposition to be being assessed for the costs of defendant-appellees' appendix (the contents of which were only the Complaint in the proceeding below) was, among other reasons, based on the fact that such was completely unnecessary because the Complaint

> "covered information which could have utterly no usefulness in adjudicating, or pertinence to the issues raised on appeal, which as the Brief (plaintiff-appellant's) will clearly and quickly show, were complaints against the procedural conduct of the Judge below in respect to subject matter that was completely without the ambits of subject matter of the Complaint in the proceeding below."

In Hanrahan's motion for permission to file a separate appendix his stated basis was, "that it is necessary for this Honorable Court to have a copy of the Complaint in order to determine the legal sufficiency thereof."

But, if one will read Hanrahan's (defendant-appellee, Merrill Lynch's) Brief, it will quickly be seen why defendants-appellees needed the Complaint in the appendix. In no other way could they even remotely suggest that Judge Werker's sua sponte order of dismissal was even potentially sua sponte, not wholly defective!

12. Here, again, counsel for defendant-appellee attempted to take advantage of plaintiff-appellant's obvious lack of knowledge of the law and legal terms. But, this time, Hanrahan exposed his "whole hand," the whole nasty game plan for upsetting pro se plaintiff-appellant, whom, his Brief states, has a "state of mind which borders on paranoia."

The Brief for defendant-appellee, Merrill Lynch, Pierce, Fenner & Smith, Inc. (page 3) states:

"Point V

"WHERE A PLEADING IS PATENTLY DEFECTIVE THERE IS NO NEED TO HAVE A HEARING OR GIVE NOTICE OF A MOTION SUA SPONTE"

"By definition, a motion sua sponte is one made without notice (Black's Law Dictionary, 4th Ed. p. 1592)."

Plaintiff-appellant Linker attaches as Exhibit B a photocopy of the definition of "sua sponte" that actually exists on page 1592 of Black's Law Dictionary Fourth Edition -- exactly the frame of reference quoted above by the Honorable Thomas J. Hanrahan, Esquire. As shown in the photocopy, the definition given by Black is as follows:

> "Sua sponte Lat. Of his own or its own will or motion; voluntarily; without prompting or suggestion."

Clearly, the Honorable Thomas J. Hanrahan, Esquire, was banking on the presumed credulity, naivete and true lack of knowledge and experience in legal areas of plaintiff-appellant. Linker,

pro se. Linker was truly shocked that counsel would try such a thing. Not that he expected a higher level of integrity from Hanrahan, or any adversary lawyer, but because plaintiff-appellant saw the great disadvantage and risks he was burdened with as pro se, particularly in the light of the content of the next succeeding paragraph.

13. In the "hearing" of September 8, 1976 (at the conclusion of which Judge Werker, of the Court below, sua sponte dismissed the Complaint), the Court warned plaintiff, Linker, that "if there is a lawyer involved in this. . he is subject to criticism under the Canons of Ethics." (Appendix, p. 53a, lines 15 through 25)

As a result of such warning, Linker has neither sought nor obtained help from a lawyer for any purpose related to this cause of action since September 8, 1976) (just as he had not sought or obtained help from a lawyer in drafting the Complaint).

However, it has now become apparent to plaintiff-appellant, Linker, that -- particularly due to the practices followed by his legal adversaries -- he can easily lose this cause of action, no matter how overwhelming the facts are in his favor, solely because he, perforce, does not have workmanlike knowledge of the rules of the Court and the implications of such when applied to the subject matter of his cause of action.

It is quite clear from defendant-appellees' Briefs that they are mainly aiming on having the case thrown out of this Court, just as happened in the Court below, on the basis that

plaintiff-appellant's case is so defective, it is incurable by this Court. Further, plaintiff-appellant does not feel secure in meeting with his capable adversaries for purposes such as agreeing on stipulations, narrowing down the issues, or taking a deposition, if not accompanied by his own counsel.

14. For the reasons detailed above, plaintiff-appellant, Linker, moves this Court to:

A. Order a pre-trial conference, as soon as possible, at which proceeding this Court will:

B. Order counsel for Walter F. Bauer to provide to plaintiff-appellant the names and current addresses of all executive officers and directors of Informatics, Inc., who held of record the right to vote at the special stockholders' meeting of February 27, 1974, the 108,705 shares of common stock of the Company, as stated in the Proxy Report for that meeting; and to order that the service of appellant's Brief and Appendix in the proceeding herein, as well as the service of the Complaint in the proceeding below on Walter F. Bauer constituted fully effective service on the other officers and directors of Informatics, Inc., as named above, in both instances.

C. Order counsel for J. Henry Smith and Equitable Life Holding Corp. to provide plaintiff-appellant with the names and current addresses of all directors of

The Equitable Life Assurance Society of the United States as of February 27, 1974; and to order that the service of appellant's Brief and Appendix in the proceeding herein, as well as the service of the Complaint in the proceeding below on J. Henry Smith and Equitable Life Holding Corp. constituted fully effective service on the directors of The Equitable Life Assurance Society of the United States as named above, in both instances.

F. Order counsel for defendant, Merrill Lynch, Pierce, Fenner & Smith to cease and desist from his efforts to render plaintiff-appellant incapable financially of continuing or finishing his cause of action, as well as cease and desist from other unconscionable and irresponsible acts, on pain of sanction by this Court.

G. Order counsel for defendants to cease and desist from what may be continuingly collusive action with Judges of this Court.

H. Order all parties to meet together at the earliest feasible date (such being in terms of plaintiff-appellant having obtained the services of counsel who could accompany plaintiff-appellant at such meeting) for the purposes of reducing or narrowing down by stipulation and

particularity the issues to be tried in the cause of action herein before this Court, and Order such other relief to plaintiff-appellants as justice may require.

Kahlman Linker

Kahlman Linker
67 Broad Street
New York, N.Y. 10004
(212) 425-3620

Sworn to before me this
24th day of November, 1976.

Notary Public State of New York
No. 43-4527933
Qualified in Richmond County
Term Expires March 30, 19[illegible]

ADDENDUM TO ABOVE

Plaintiff-appellant believes it will aid the Court in the proceeding herein to include a copy in the Appendix as Exhibit C of the Motion for Reopening Case for Purposes of Perpetuating Testimony, Affidavit in Support of Motion to Reopen Case for Purposes of Perpetuating Testimony, and Order Granting Leave to take Depositions Pending Hearing of Appeal, filed November 26, 1976, with Judge Henry Werker, United States District Court, Southern District of New York.

Plaintiff-appellant has not included the stated three documents in the Appendix provided to defendant counsel for the reason that such would be needless duplication of materials, defendant counsel receiving such copies as a matter of normal procedure in the service of those motion papers.

K.L.

76-7453
C 31

DATE STAMPING BY POST OFFICE OF MAILING WAS Nov. 16, 1976 (ALTHOUGH HANRAHAN TOLD K.L. IT WAS MAILED 11/12/76 AT 4:30)

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 19th day of November, one thousand nine hundred and seventy-six.

Kahlman Linker & Dynamismm,

Plaintiff-Appellant,

v.

Merril Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., Goldman Sachs & CO., Walter P.Bauer, Werner L. Frank, Francis V. Walker, and all other executive officers and directors of Informatics, Inc., as of Feb. 27, 1974, Henry J. Smith, former Chairman and Director, and all other directors of the Equitable Life Assurance Society of the United States, as of Februery 27, 1974, The Equitable Life Holding Corporation,

Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the

~~appellant~~ Merril Lynch, Pierce, Fenner &Smith, Inc. ~~appellee~~

by notice of motion dated November 12, 1976 for leave to file today an appendix

be and it hereby is granted ~~denied~~.

~~It is further ordered that~~

Exhibit A

William H. Mulligan

Circuit Judges

vered at the bankrupt of- what is called the "dock- he petitioning creditor is ket. Eden, Bankr. 51, 52.

e selecting or nominating ut of the whole number e panel. It is especially a *special* jury, where a prepared by the proper officer, and the parties, in turn, strike off a certain number of names, until the list is reduced to twelve. A jury thus chosen is called a "struck jury." Wallace v. Railroad Co., 8 Houst., Del., 529, 18 A. 818; Cook v. State, 24 N.J.L. 843.

STRIKING OFF THE ROLL. The disbarring of an attorney or solicitor.

STRIP. The act of spoiling or unlawfully taking away anything from the land, by the tenant for life or years, or by one holding an estate in the land less than the entire fee. Pub.St.Mass.1882, p. 1295.

STRIPPING A MINE. In iron mining. Removal of the earth from the underlying body of iron ore. Bartnes v. Pittsburg Iron Ore Co., 123 Minn. 131, 143 N.W. 117.

STRONG. Cogent, powerful, forcible. Wright v. Austin, Tex.Civ.App., 175 S.W.2d 281, 283.

STRONG HAND. The words "with strong hand" imply a degree of criminal force, whereas the words *vi et armis* ("with force and arms") are mere formal words in the action of trespass, and the plaintiff is not bound to prove any force. The statutes relating to forcible entries use the words "with a strong hand" as describing that degree of force which makes an entry or detainer of lands criminal. Brown.

STRONGLY CORROBORATED. A degree of corroboration amounting to corroboration from independent facts and circumstances which is clear and satisfactory to the court and jury. Wright v. Austin, Tex.Civ.App., 175 S.W.2d 281, 283.

STRUCK. In pleading. A word essential in an indictment for murder, when the death arises from any wounding, beating, or bruising. 1 Bulst. 184; 5 Coke, 122; 3 Mod. 202.

STRUCK JURY. See Striking a Jury.

STRUCTURAL ALTERATION OR CHANGE. One that affects a vital and substantial portion of a thing; that changes its characteristic appearance, the fundamental purpose of its erection, the uses contemplated, one that is extraordinary in scope and effect, or unusual in expenditure. Pross v. Excelsior Cleaning & Dyeing Co., 110 Misc. 195, 179 N.Y.S. 176, 179; Paye v. City of Grosse Pointe, 279 Mich. 254, 271 N.W. 826, 827.

STRUCTURE. Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. C. K. Eddy & Sons v. Tierney, 276 Mich. 333, 267 N.W. 852, 855. That which is built or constructed; an edifice or building of any kind. Poles connected by wires for the transmission of electricity. Forbes v. Electric Co., 19 Or. 61, 23 P. 670, 20 Am.St.Rep. 793; a mine or pit, Helm v. Chapman, 66 Cal. 291, 5 P. 352; a railroad track, Lee v. Barkhampsted, 46 Conn. 213. Swings or seats are not, McCormack v. Bertschinger, 115 Or. 250, 237 P. 363, 365; Barnes v. Montana Lumber & Hardware Co., 67 Mont. 481, 216 P. 335, 336; Deiner v. Sutermeister, 266 Mo. 505, 178 S.W. 757, 759; Armitage v. Bernheim, 32 Idaho, 594, 187 P. 938, 939.

STRUMPET. A whore, harlot, or courtesan. This word was anciently used for an addition. It occurs as an addition to the name of a woman in a return made by a jury in the sixth year of Henry V. Wharton.

STUFF GOWN. The professional robe worn by barristers of the outer bar; viz., those who have not been admitted to the rank of king's counsel. Brown.

STULTIFY. To make one out mentally incapacitated for the performance of an act.

STULTILOQUIUM. Lat. In old English law. Vicious pleading, for which a fine was imposed by King John, supposed to be the origin of the fines for *beau-pleader*. Crabb, Eng. Law, 135.

STUMP. As respects coal mining operations is the base or remains of a worked-out pillar left after previous mining operations to support the surface. McCormack v. Jermyn, 351 Pa. 161, 40 A. 2d 477, 478.

STUMPAGE. The sum agreed to be paid to an owner of land for trees standing (or lying) upon his land, the purchaser being permitted to enter upon the land and to cut down and remove the trees; in other words, it is the price paid for a license to cut. Blood v. Drummond, 67 Me. 478.

STUPRUM. Lat. In the Roman and civil law. Unlawful sexual intercourse between a man and an unmarried woman;—distinguished from adultery by being committed with a virgin or widow. Inst. 4, 18, 4; Dig. 48, 5, 6; 50, 16, 101.

Any sexual intercourse between a man and an unmarried woman (not a slave), otherwise than in concubinage; illicit intercourse. Webster.

Any union of the sexes forbidden by morality. Cent. Dict.

STURGEON. A royal fish which, when either thrown ashore or caught near the coast, is the property of the sovereign. 2 Steph.Comm. 19n, 540.

STYLE. ... a verb, to call, name, or ... as a noun, the title or appellation of a person.

SUA SPONTE. Lat. Of his or its own will or motion; voluntarily; without prompting or suggestion.

SUABLE. Capable of being, or liable to be, sued. A suable cause of action is the matured cause of action.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAHLMAN LINKER and DYNAMISMM, Plaintiffs, Pro Se	:	76 Civ. 3543 (Judge Werker, H.)
v.	:	
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN, SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, J. HENRY SMITH, former Chairman and Director, and all other directors of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named, Defendants.	:	MOTION FOR REOPENING CASE FOR PURPOSES OF PERPETUATING TESTIMONY

Sirs:

Plaintiff moves this Court to reopen the above-entitled action on September 8, 1976 (and the judgment entered thereon on September 15, 1976), and to grant an Order of this Court granting leave to take a deposition with respect to the subject matter of the cause of action above-entitled, in order to perpetuate testimony in respect to certain irregularities in the docket entries, motions which had been before the Court herein, conversations on the part of plaintiff with the person whose testimony on the above-entitled action needs to be perpetuated with respect to the action now on appeal with the United States Circuit Court of Appeals for

EXHIBIT C

the Second Circuit, and other items related to the above-entitled action, such person, Jo Anne Ganek, having terminated her employment as law clerk with the Court herein on or about September 8, 1976, when this Court sua sponte, ordered dismissal of plaintiff's complaint, all of which more fully appears from the affidavit of plaintiff, Kahlman Linker, attached hereto.

Dated: November 26, 1976

Yours, etc.,

KAHLMAN LINKER
Plaintiff Pro Se
67 Broad Street
New York, N.Y. 10004
(212) 425-3620

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

KAHLMAN LINKER and DYNAMISMM,

Plaintiff Pro Se,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., et al.,

Defendants.

- - - - - - - - - - - - - - - - - -x

76 Civ. 3543
(Judge Werker, H.)

AFFIDAVIT IN SUPPORT OF MOTION TO REOPEN CASE FOR PURPOSES OF PERPETUATING TESTIMONY

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

KAHLMAN LINKER, being duly sworn, deposes and says:

1. He is plaintiff pro se in this action.

2. The captioned cause of action is now before the United States Court of Appeals for the Second Circuit, on appeal from an order of this Court by Judge Henry Werker, United States District Court for the Southern District of New York, dismissing sua sponte the Complaint (with prejudice).

3. Since the captioned cause of action before this Court was abruptly terminated in its early stages by dismissal and entry of judgment (dismissal with prejudice) and reargument denied, affiant has discovered that there were irregularities in the docket entries of the proceeding herein, namely: that the entries indicated affiant had been notified by the Pro Se Clerk of an order by the Court, whereas affiant received no such notification; that

the docket entries did not include entry of an argument made by affiant in opposition to granting to defendants postponement for answering the Complaint, whereas there is evidence that on at least two occasions such argument had been delivered at the appropriate time and with the appropriate process to the Judge's chambers; nor do the docket entries include entry of an Order to Show Cause for Summary Judgment, a copy of which was presented to the Court through the law clerk (but refused and returned by the Court through the law clerk without endorsement of any kind, except with a stamping on it indicating the date it had been "received" in the Judge's chambers) and, at a later date, the document delivered to the Judge's chambers as an attachment to a letter with the request, among others, that the document be filed for the record.

Thus, there is need for affiant to obtain explanation of the deficiencies or other irregularities in the docket entries, and substantiation by testimony on the part of the Court's law clerk of affiant's claims, so that the subject matter of the documents can be used as evidence now before the Court of Appeals for the Second Circuit, with hearing scheduled for January 3, 1977.

4. It will be observed in Exhibit A, addended (being paragraphs 8, 9 and 10 on pages 8 through 12 of Brief for plaintiffs-appellants in the captioned cause of action on appeal in the United States Court of Appeals for the Second Circuit) that references are made to conversations with the law clerk of this

Court.

Thus, there is need for affiant to have confirmation or denial of the accuracy of affiant's representations made in paragraph 8 (pages 8 and 9), paragraph 9 (pages 9 and 10), and paragraph 10 (pages 11 and 12) of affiant's (plaintiff-appellant's) Brief, as well as clarification and explanations by the Court's law clerk of Judge Werker's orders to her with respect to the subject matter of the sections cited (in this paragraph) for transmittal to affiants or defendant counsel or for processing with the clerk of the District Court, or for a description by her of the facts in the specific incident cited in plaintiff-appellant's Brief.

5 It will be observed in Exhibit B, appended (being page 3 of Brief for defendant-appellee, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., in the captioned cause of action on appeal in the United States Court of Appeals for the Second Circuit) that defendant represents that a motion sua sponte is one made "without notice," quoting Black's Law Dictionary (4th Ed., p. 1592), while such source (Black's Law Dictionary, 4th Ed., p. 1592 -- Exhibit C appended) actually defines "sua sponte" as "of his or its own will or motion; voluntarily; without prompting or suggestion."

Although Exhibit D, appended (being page 57a of the transcription of the hearing on September 8, 1976, lines 7 through 12 of plaintiff-appellant's Appendix) clearly indicated that Irving Parker, counsel for defendant, WALTER F. BAUER, had prompted or "suggested" that the Court sua sponte dismiss this

action, there is need for affiant also to have confirmation for his belief that when and as Thomas J. Hanrahan, Esq., counsel for defendant, Merrill Lynch, Pierce, Fenner& Smith, Inc., was "in the office" of Judge Werker on the afternoon of September 3, 1976 (Exhibit A, page 12, lines 9 and 10) he preliminarily gave notice to the Court that he expected later to file his Notice, Affidavit and Memorandum of Motion to Dismiss (based on plaintiff's lack of standing to sue as pro se, etc., of September 7, 1976, ret. 9/24/76), the circumstances of counsel Hanrahan's visit to "the office" of Judge Werker having been such as to constitute "prompting or suggesting" to Judge Werker that he "sua sponte" order dismissal, even possibly indicating that Hanrahan had been in conference with Judge Werker at the time.

Thus, there is need for affiant to have from Judge Werker's law clerk a delineation of what, to her knowledge, actually occurred in Judge Werker's "office" on the afternoon of September 3, 1976, when, as and as long as Mr. Hanrahan, counsel for defendant, Merrill Lynch, Pierce, Fenner & Smith, Inc., was there.

6. It will be observed in Exhibit B, appended (being page 3 of Brief for Defendant-Appellee, Merrill Lynch, Pierce, Fenner & Smith, Inc., in the captioned cause of action on appeal in the United States Court of Appeals for the Second Circuit) that representation is made by counsel for plaintiff-appellants (in the fourth paragraph, second and third lines) to the effect that "Judge Werker. . had read the Complaint."

Thus, there is need for both affiant and defendant-appellee counsel to have from Judge Werker's law clerk confirmation or denial of the representation that Judge Werker had been given the Complaint of the captioned action for study and, apparently (to the law clerk) had devoted time for study of the Complaint before the hearing of September 8, 1976, at the conclusion of which Judge Werker ordered, sua sponte, dismissal of the cause of action herein.

7. Affiant desires to take the deposition of Ms. Jo Anne Ganek, whose address is unknown to affiant (but known to the staff in Judge Werker's chambers) in order to perpetuate her testimony for use in the captioned action now on appeal in the United States Court of Appeals for the Second Circuit (the hearing of which is scheduled for January 3, 1976. The substance of her testimony which affiant expects to elicit from her is described in paragraphs 3, 4, 5 and 6, supra, of the affidavit herein.

8. The reason for perpetuation of her testimony is that said Ms. Jo Anne Ganek terminated her employment as law clerk to Judge Werker on, shortly before, or shortly after September 8, 1976, the date Judge Werker ordered, sua sponte, dismissal of the cause of action herein. The unusual coincidence of the termination of employment and the sua sponte order of dismissal, as well as the conflicting answers as to the reasons for the termination of employment given affiant by the staff of Judge Werker prompts affiant to need to obtain her deposition very soon, particularly

in view of the short time remaining before the hearing date of the action in the Court of Appeals.

WHEREFORE, affiant moves the Court for an Order authorizing him to take the deposition of Ms. Jo Anne Ganek on oral examination, pursuant to the Federal Rules of Civil Procedure.

Kahlman Linker
Plaintiff pro se
67 Broad Street
New York, N.Y. 10004

Sworn to before me this
26th day of November, 1976.

ALICE L. PICARD
Notary Public State of New York
No. 43-4527933
Qualified in Richmond County
Term Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

KAHLMAN LINKER and DYNAMISMM,

Plaintiff Pro Se,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., et al.,

Defendants.

- - - - - - - - - - - - - - - - - -x

76 Civ. 3543
(Judge Werker, H.)

ORDER GRANTING LEAVE TO TAKE DEPOSITIONS PENDING HEARING OF APPEAL

This cause came on to be heard on motion of plaintiff for leave to take the deposition of Ms. Jo Anne Ganek, and it appearing to the Court that an appeal is now pending from the judgment of this Court entered September 15, 1976, and that perpetuation of the testimony of the said Ms. Jo Anne Ganek is proper to avoid a failure or delay of justice, in that said Ms. Jo Anne Ganek's employment as law clerk to the Court in the cause of action had been terminated on or about the date of dismissal of the cause of action herein, it is

ORDERED, that plaintiff is granted leave to take the deposition of Ms. Jo Anne Ganek in accordance with the provisions of the Federal Rules of Civil Procedure.

E N T E R:

U.S.D.J.

"It appearing to the Court that plaintiff pro se has no beneficial interest in the matter of the merger which is the subject matter of the complaint herein, the Court of its own motion makes the following order. . Dismissed with prejudice. . ."

6. On September 24, 1976, plaintiff-appellant wrote and delivered a letter to Judge Werker demanding that the Order of Dismissal be amended by deleting the "no" and inserting "only indirect" (in front of beneficial interest) in its place. Such demand was denied by the Court below on September 24, 1976, as is documented by Judge Werker's endorsement on plaintiff's letter to him of September 27, 1976 (appended as Exhibit A).

7. To retrace and describe the facts of the proceeding below chronologically: on August 27, 1976, plaintiff filed an Order to Show Cause for Preliminary Injunction against defendant, The Equitable Life Holding Corporation ("Equitable") endorsed by Judge Werker, requiring the service and filing of answering papers on or before September 3, 1976, and hearings before the Court on September 8, 1976.

8. On the morning of August 26, 1976, upon hearing from counsel for Equitable (the only defendant named in the Order to Show Cause for Preliminary Injunction) that he was making a motion that same afternoon before the Court to obtain a postponement for answering the complaint, plaintiff wrote and delivered to Judge Werker a hand-printed letter (after phoning the Court's law clerk

during the morning to advise her that an argument in opposition to such postponement would be delivered to the Judge's chambers early that afternoon).

A verbatim transcript of the hand-printed letter from plaintiff to Judge Werker, dated and delivered by 3:00 P.M. of August 26, 1976, is appended as Exhibit B. It is a document apparently having vital evidentiary value in plaintiff-appellant's instant cause of action, inasmuch as the receipt of it by the Court below seemingly marked a drastic change in the character of Judge Werker's conduct of the proceeding.

In fact, when, at a later date, plaintiff requested (through Judge Werker's law clerk) that he sign the letter with his order entered thereon, plaintiff was informed that the Court had declined to do so. When, even later, plaintiff requested the Court's law clerk to tell Judge Werker he had no alternative but to endorse, "Denied," on the letter, because he had approved postponement on defendant's motion, the law clerk's answer was, "The Judge still refuses to sign."

9. Upon belief at the time that Judge Werker had granted postponement to all defendants for answering the complaint -- with truly frightening consequences for the public interest (as is implied in plaintiff's letter to Judge Werker of August 26 -- Exhibit B)-- plaintiff on August 31, 1976, petitioned the Court for an Order to Show Cause for Summary Judgment against three of the eight defendants (Merrill Lynch, Pierce, Fenner & Smith, Inc.

("Merrill Lynch"), Dean Witter & Co., Inc. ("Dean Witter"), and Goldman, Sachs & Co. ("Goldman, Sachs"), they being parties directly involved in the subject matter of plaintiff's letter to Judge Werker of August 26, 1976.

After the Order to Show Cause had been approved and endorsed for procedural propriety by the Motions & Appeals Clerk, plaintiff, on the instructions of the Clerk, delivered the Order in the early afternoon of August 31, 1976, to Judge Werker's law clerk, Ms. Ganek, for the Court's attention. Shortly thereafter, Ms. Ganek came out in the hallway from the trial over which the Judge was presiding and heatedly informed plaintiff that Judge Werker would not approve the Order to Show Cause for Summary Judgment -- simultaneously thrusting the document back into plaintiff's hands, the Order being unsigned and unendorsed in any way except, "Received in chambers of Judge Henry F. Werker, August 31, 1976."

Plaintiff (as he recalls the conversation) believes Ms. Ganek then said, "The Judge never approves an Order to Show Cause for Summary Judgment until after defendants have answered the complaint." However, when plaintiff protested, "But Judge Werker has granted a postponement to defendants," the law clerk, seemingly embarrassed, admitted such was so; but she persisted in stating that the Judge would not reconsider or change his decision with respect to plaintiff's serving and filing the Order to Show Cause for Summary Judgment.

(Actually, Judge Werker's law clerk had apparently not been

aware that postponement to answer the complaint had been overtly granted only to one defendant, The Equitable. As the transcript of the proceeding of September 8, 1976, will confirm, none of the other defendants had been notified that Equitable had been granted a postponement; and Judge Werker at such proceeding made no effort to enlighten them accordingly that they, too, had been granted such postponement.)

On September 27, 1976, plaintiff wrote and delivered a letter to Judge Werker, requesting that he endorse on the front page of the Order to Show Cause for Summary Judgment (received in the Judge's chambers on August 31, 1976) his decision in respect to the document which had been transmitted to plaintiff from Ms. Ganek (signing, dating and making the document available for pick-up by plaintiff).

A facsimile of the original copy of the Order to Show Cause for Summary Judgment, received in Judge Werker's chambers on August 31, 1976, and as endorsed by the Motions & Appeals Clerk, is appended as Exhibit C. It is to be observed that Judge Werker's disapproval of service and filing (and his signature) are not endorsed on the document, plaintiff having been told by the Court's law clerk that such, procedurally, is not the rule, "The document is merely returned" (unendorsed).

10. Plaintiff received a telephone call from Judge Werker's law clerk, Ms. Ganek, early Friday afternoon, September 3, 1976, at which time she stated that the Judge wished to deliver a

message to him later that afternoon. At 4:45 P.M., Ms. Ganek phoned again, stating that Judge Werker asked that plaintiff call as many defendant counsel "as he could get in touch with," and tell them the Judge would like each to be in attendance for a pre-trial conference in Room 312 on Wednesday, September 8, at 2:00 P.M. (the same time and place which had been set for hearing of plaintiff's Order to Show Cause for Preliminary Injunction v. Equitable.

Ms. Ganek, at that time, also told plaintiff he need not phone Merrill Lynch inasmuch as counsel for that firm had been "in the office" that afternoon and had already been advised about the forthcoming conference. Plaintiff told Ms. Ganek he had reservations about being able to make contact in time with the counsel for the three West Coast defendants, but was told he need only do his best. (Actually, plaintiff was able, directly or with the help of some defendant counsel, to notify all.)

11. Plaintiff arrived in Room 312 of the Courthouse well before 2:00 P.M. on September 8, 1976. When counsel for defendants also arrived, plaintiff served a copy of his Supplementary Brief in Support of Plaintiff's Order to Show Cause for Preliminary Injunction on Mr. Weinstock, counsel for Equitable; he deposited the verified copy of the Supplementary Brief with the Clerk of the Court, and was then served by Mr. Hanrahan, counsel for Merrill Lynch, with a Notice of Motion, an Affidavit in Support of Motion to Dismiss, and a Memorandum of Law in support of motion to dismiss, returnable before Judge Werker on September 24, 1976.

POINT V

Where a Pleading is Patently Defective There is No Need to Have a Hearing or Give Notice of a Motion *Sua Sponte*

By definition, a motion *sua sponte* is one made without notice (Black's Law Dictionary, 4th Ed., p. 1592). Appellant Linker's argument that the proceedings at the September 8 conference (see Appellant's Brief, p. 14) were "star-chamber" hearings is not based on the facts; it is based on a misconception of law and state of mind which borders on paranoia.

The Appendix contains a transcript of this conference. Beginning at page 46a, Mr. Linker explained his case for four pages without interruption. On the fifth page, Judge Werker asked a question which demonstrates that he was paying attention to what Mr. Linker had to say.

Mr. Linker was then allowed to continue for two more pages before the Court interrupted again.

The questions put to Mr. Linker by the Court at that point clearly show that Judge Werker was listening to him and had read the Complaint.

The answers Mr. Linker gave (see page 52a) in and of themselves supplied sufficient legal grounds for a Motion to Dismiss.

After all of the Defendant's attorneys were given an opportunity to speak, the Court gave Mr. Linker the chance to reply. Mr. Linker went on for two more pages.

Finally, Judge Werker *sua sponte* dismissed the Complaint based on "what I heard today" (p. 60a of the Appendix).

Mr. Linker's assertion that he was given "extremely little opportunity to answer" (Appellant's Brief, p. 14) is just not true. The conduct of Judge Werker was not only fair to Mr. Linker but was, in my opinion, very courteous and patient.

EXHIBIT B

vered at the bankrupt of- what is called the "dock- he petitioning creditor is ket. Eden, Bankr. 51, 52.

e selecting or nominating ut of the whole number e panel. It is especially a *special* jury, where a ...eight is prepared by the proper ...ficer, and the parties, in turn, strike off a certain number of names, until the list is reduced to twelve. A jury thus chosen is called a "struck jury." Wallace v. Railroad Co., 8 Houst., Del., 529, 18 A. 818; Cook v. State, 24 N.J.L. 843.

STRIKING OFF THE ROLL. The disbarring of an attorney or solicitor.

STRIP. The act of spoiling or unlawfully taking away anything from the land, by the tenant for life or years, or by one holding a ... in the land less than the entire fee. Pu... ss.1882, p. 1295.

STRIPPING A MINE. In iron mining. Removal of the earth from the underlying body of iron ore. Bartnes v. Pittsburg Iron Ore Co., 123 Minn. 131, 143 N.W. 117.

STRONG. Cogent, powerful, forcible. Wright v. Austin, Tex.Civ.App., 175 S.W.2d 281, 283.

STRONG HAND. The words "with strong hand" imply a degree of criminal force, whereas the words *vi et armis* ("with force and arms") are mere formal words in the action of trespass, and the plaintiff is not bound to prove any force. The statutes relating to forcible entries use the words "with a strong hand" as describing that degree of force which makes an entry or detainer of lands criminal. Brown.

STRONGLY CORROBORATED. A degree of corroboration amounting to corroboration from independent facts and circumstances which is clear and satisfactory to the court and jury. Wright v. Austin, Tex.Civ.App., 175 S.W.2d 281, 283.

STRUCK. In pleading. A word essential in an indictment for murder, when the death arises from any wounding, beating, or bruising. 1 Bulst. 184; 5 Coke, 122; 3 Mod. 202.

STRUCK JURY. See Striking a Jury.

STRUCTURAL ALTERATION OR CHANGE. One that affects a vital and substantial portion of a thing; that changes its characteristic appearance, the fundamental purpose of its erection, the uses contemplated, one that is extraordinary, in scope and effect, or unusual in expenditure. Pross v. Excelsior Cleaning & Dyeing Co., 110 Misc. 185, 179 N.Y.S. 176, 179; Paye v. City of Grosse Pointe, 279 Mich. 254, 271 N.W. 826, 827.

STRUCTURE. Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. C. K. Eddy & Sons v. Tierney, 276 Mich. 333, 267 N.W. 852, 855. That which is built or constructed; an edifice or building of any kind. Poles connected by wires for the transmission of electricity. Forbes v. Electric Co., 19 Or. 61, 23 P. 670, 20 Am.St.Rep. 793; a mine or pit, Helm v. Chapman, 66 Cal. 291, 5 P. 352; a railroad track, Lee v. Barkhampsted, 5 Conn. 213. Swings or seats are not, McCormack v. Bertschinger, 115 Or. 250, 237 P. 363, 365; Barnes v. Montana Lumber & Hardware Co., 67 Mont. 481, 216 P. 335, 336; Deiner v. Sutermeister, 266 Mo. 505, 178 S.W. 757, 759; Armitage v. Bernheim, 32 Idaho, 594, 187 P. 938, 939.

STRUMPET. A whore, harlot, or courtesan. This word was anciently used for an addition. It occurs as an addition to the name of a woman in a return made by a jury in the sixth year of Henry V. Wharton.

STUFF GOWN. The professional robe worn by barristers of the outer bar; viz., those who have not been admitted to the rank of king's counsel. Brown.

STULTIFY. To make one out mentally incapacitated for the performance of an act.

STULTILOQUIUM. Lat. In old English law. Vicious pleading, for which a fine was imposed by King John, supposed to be the origin of the fines for *beau-pleader*. Crabb, Eng. Law, 135.

STU... As respects coal mining operations is th... or remains of a worked-out pillar left after ...evious mining operations to support the surface. McCormack v. Jermyn, 351 Pa. 161, 40 A. 2d 477, 478.

STUMPAGE. The sum agreed to be paid to an owner of land for trees standing (or lying) upon his land, the purchaser being permitted to enter upon the land and to cut down and remove the trees; in other words, it is the price paid for a license to cut. Blood v. Drummond, 67 Me. 478.

STUPRUM. Lat. In the Roman and civil law. Unlawful sexual intercourse between a man and an unmarried woman;—distinguished from adultery by being committed with a virgin or widow. Inst. 4, 18, 4; Dig. 48, 5, 6; 50, 16, 101.

Any sexual intercourse between a man and an unmarried woman (not a slave), otherwise than in concubinage; illicit intercourse. Webster.

Any union of the sexes forbidden by morality. Cent. Dict.

STURGEON. A royal fish which, when either thrown ashore or caught near the coast, is the property of the sovereign. 2 Steph.Comm. 19..., 540.

STYLE. ... as a verb, to call, name, or ... as a noun, the title or appellation of a person.

SUA SPONTE. Lat. Of his or its own will or motion; voluntarily; without prompting or suggestion.

SUABLE. Capable of being, or liable to be, sued. A suable cause of action is the matured cause of action.

EXHIBIT C

jgsr

respectfully request additional time within which to answer or move in respect of the complaint.

I might add, your Honor, that it seems to me that on the basis of the statements made by Mr. Linker there is no action pending here, he has no standing to sue, and with the greatest respect I suggest to your Honor that the Court sua sponte would be fully justified in dismissing this action without taking the time of the Court any further, without taking the time of the purported parties any further, and without taking the time of counsel, your Honor.

THE COURT: Anyone else?

MR. WEINSTOCK: Your Honor, may I also request additional time for the defendant J. Henry Smith, who was served on September 2, that extension of time with respect to answer our motion, to October 5?

THE COURT: Mr. Linker, I'll listen for a minute.

MR. LINKER: Sir, Dynamismm appears and appears pro se for a very definite reason.

THE COURT: Dynamismm can't appear pro se. There is no such person as Dynamismm.

MR. LINKER: Sir, I would require just a moment to explain the problem that the plaintiff pro se had in

- EXHIBIT D -

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ **Certification By Attorney** certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ **Attorney's Affirmation** shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

Check Applicable Box

☐ **Individual Verification** being duly sworn, deposes and says: deponent is the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ **Corporate Verification** the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Check Applicable Box

☐ **Affidavit of Service By Mail** On 19 deponent served the within upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ **Affidavit of Personal Service** On 19 at deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....
The name signed must be printed beneath

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.
Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 76-7453 Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KAHLMAN LINKER and DYNAMISMM,

Plaintiffs-Appellants,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., et al.,

Defendants-Appellees.

MOTION

KAHLMAN LINKER
~~Attorney~~ for Plaintiff pro se
Office and Post Office Address, Telephone
67 Broad Street
New York, N.Y. 10004
425-3620

To

Attorney(s) for

Service of a copy of the within
is hereby admitted.
Dated,

.....

Attorney(s) for

1500—JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS, N.Y.C. 10013